c.8.1002

Single Bench (1)

IN THE HIGH COURT OF JUDICATURE AT CHHATTISGARH – BILASPUR

W.P. No. 1249 /2005

PETITIONER :

AGRAWAL STRUCTURE MILLS (P) LTD.,
A Company Registered under the Indian Companies Act, 1956
Factory At Urla Industrial Area, Birgaon, Raipur (C.G)
Office at : Behind Krishna Talkies, Samta Colony, Raipur (C.G),
Through Director – **SHRI ANIL AGRAWAL**,
S/o. Shri M.L. Agrawal,
R/o. : Samta Colony, Raipur (C.G)

Versus

P.R. No. 2437 05
Presented by Shri O.H. Rao
dated 07.03.05

RESPONDENTS :

(1) **STATE OF CHHATTISGARH**
Represented by the Special Secretary,
Ministry of Commerce & Industries,
State of Chhattisgarh, Mantralaya, Raipur (Chhattisgarh)

(2) **ADDITIONAL DIRECTOR – INDUSTRIES**,
Directorate of Industries, Raipur (Chhattisgarh)

PETITION UNDER ARTICLE 226 / 227 OF THE CONSTITUTION OF INDIA.

A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

WRIT PETITION NO.1249 OF 2005

Agrawal Structure Mills (P) Ltd

Versus

State of Chhattisgarh and another

POST FOR ORDER ON 8th. AUGUST, 2005

Sd/-
L.C.Bhadoo
Judge

7/8-8-2005

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.1249 of 2005

Agrawal Structure Mills (P) Ltd.

- Versus -

State of Chhattisgarh and another.

Present: -

Shri Satyawan Agarwal with
Shri R.M. Solapurkar, Advocates: For the petitioner.

Shri N.K. Agrawal, Deputy Advocate General
with Shri R. R. Sinha, Panel Lawyer: For the State/respondents.

O R D E R

(Passed on 8th August, 2005)

L.C. BHADOO, J.

1. By this writ petition under Article 226/227 of the Constitution of India the petitioner has questioned the legality, propriety and correctness of the communications dated 7th August 2004 and 23rd November 2004 whereby the Additional Director, Industries has refused to extend the concession and benefit under the Industrial Policy 2001-2006 notified under the notification dated 3/7th-6-2003 entitling a new industry for concession of 8% electricity duty for a period of 10 years as well as interest subsidy to the extent of Rs.5 lakhs per year for a period of 5 years.

2. The petitioner's case, as set out in the petition, is that the petitioner has established a new industrial unit as per the Industrial Policy 2001-2006 and thereby he is eligible for exemption from electricity duty on consumption of the electricity for a period of 10 years starting from 3-1-2003 and also entitled for interest subsidy to the extent of Rs.5 lakhs per year for a period of 5 years, as the case of the petitioner is covered under the Industrial Policy notified under the notification

dated 3-6-2003 for the period 2001-2006. The petitioner's existing industry i.e. Rolling Mill started production on 3-8-98 which is located in Urla Industrial Area, Raipur on lease hold plot No.162 granted by the District Industries Centre and also on the adjoining free hold land of the petitioner. The existing rolling mill was located in an area of 14386 sq. ft. The petitioner company in order to take advantage of new Industrial Policy established a new industrial unit for production of M.S. Ingot, Runner Riser, by constructing an independent and separate shed and building on free hold land belonging to the petitioner and located in the premises of the existing rolling mill and has installed new machines valuing more than Rs.50 lakhs. The new industrial unit is entirely independent and separate from the building and shed of the existing unit and for that purpose the existing electrical load/power supply has also been enhanced. The electricity supply for the rolling mill from the erstwhile M.P.E.B. was of 1200 KVA and for establishment and working of the new industrial unit the load of electricity has been enhanced to 5700 KVA. A separate book of accounts is being maintained for this new industrial unit.

3. The factory licence, licence for State Commercial Tax/Central Sales Tax, Central Excise licence have been obtained for establishment of new industrial unit. The copies of old and amended factory licence, Commercial Tax & Central Sales Tax Registration Certificates and Central Excise Licence have been enclosed as Annexures-P/3 to P/6 respectively. Therefore, the petitioner company is entitled for concession of 8% amount of electricity duty and also interest to the tune of Rs.5 lakhs per year for a period of 5 years.

4. Return has been filed on behalf of respondents in which it has been mentioned that the unit for which the petitioner is claiming concessions is not a new unit as per the Industrial Policy, rather this was an expansion of the existing rolling mill and the petitioner company was

not able to fulfill the requirement for the aforesaid exemptions under the new Industrial Policy.

5. I have heard Shri Satyawan Agrawal with Shri R. M. Solapurkar, learned counsel for the petitioner and Shri N. K. Agrawal, learned Deputy Advocate General with Shri R. R. Sinha, Panel Lawyer for the State/respondents.

6. Shri Satyawan Agrawal, learned counsel for the petitioner while inviting the attention of the Court towards clause-4 of the notification dated 3/7th-6-2003 regarding new Industrial Policy, argued that it is evident from Permanent Registration Certificate (Annexure-P/1), licence to work a factory (Annexure-P/3), registration certificate under the Sales Tax (Annexure-P/4), registration certificate under the Central Sales Tax Rules 1957 (Annexure-P/5), proforma of registration certificate (Annexure-P/6), the site map of location where the new industry has been set up and the order dated 20-4-2002 issued by the Department of Commerce and Industry, Government of Chhattisgarh, Annexures-P/10 & P/11, that the case of the petitioner company is covered under the new policy as the petitioner's existing unit was rolling mill, whereas a totally separate new unit in the same premises was set up by the petitioner company of a different product i.e. M.S. Ingot by incurring an expenditure to the tune of Rs.68,58,997/-. Therefore, action of respondents was not in consonance with the new Industrial Policy and the petitioner is entitled for concession of 8% electricity duty and interest of Rs.5 lakhs per year for a period of 5 years.

7. On the other hand, Shri N.K. Agrawal, learned Deputy Advocate General argued that from perusal of factory licence as well as other registration certificates, it is evident that these licences and registration certificates were issued in the year 1996-98 for the rolling mill and only the addition regarding M.S. Ingot has been incorporated in these old licences which shows that the independent

unit as per clause-4 of the Industrial Policy was not set up by the petitioner. Hence, the petitioner company has rightly been refused the concession and benefit available under the said new Industrial Policy 2001-2006.

8. In order to appreciate the arguments advanced by respective counsel it will be useful to re-produce clause-4 of the Industrial Policy.

> 'Clause-4: New Industrial unit means (1) which has started commercial production on or after 1-11-2001 and there should be permanent registration certificate and production certificate issued by the competent officer indicating the same intention.
>
> (2) The industrial unit which has been set up in the premises of the existing industrial unit shall also be considered as new unit on satisfying the following conditions:
>
> (a) There should be a separate factory licence/central excise tax licence whichever is necessary and sales tax Act, commercial tax under central sales tax, there should be a separate registration certificate and should be of independent existence.
>
> (b) There should be a new building and shed constructed with new plant and machinery of the unit on a separate land for the industrial unit. There should be a separate electric connection provided by the Chhattisgarh Electricity Board or the additional electric load has been sanctioned.
>
> (c) The unit must be producing separate products other than the existing products.
>
> (d) The new industrial unit must maintain its separate account books.
>
> (e) Also fulfill the conditions of point No.1.

9. As per annexures-P/10 and P/11 the Commercial and Industrial Department of Public Undertaking Ministry, Raipur issued an order on 20th April 2002 and notification dated 13-2-2003 whereby apart from other industry in the thrust sector list, as per clause No.2 an industry based on steel and iron of the value of Rs.50 lakhs has been included. Therefore, in order to have benefit of new Industrial Policy as per the

notification dated 3/7th-6-2003 the said new unit must satisfy the above requirements.

10. In the light of the above, if we look into the documents submitted by the petitioner with the petition, Annexure-P/1 is the permanent registration certificate issued by the Director of Industries, Raiupr. This was issued to the existing unit i.e. Agrawal Structure Mills (P) Ltd., on 3-8-98 and the industry was for re-rolling products up to 13,000 MT. Perusal of the same shows that additional capacity was extended on 28-2-2002 to the extent of 18,000 MT and the reverse side of this certificate shows that additional product was inserted on 20th March 2003 i.e. M.S. Ingot. Similarly, licence to work a factory Annexure-P/3 was also originally issued regarding re-rolling of steel issued under the licence No.279/14378/RPR/2MCS which was renewed up to 30th December 2001. Second part of Annexure-P/3 at page 19 shows that in the year 2003 renewal licence to work a factory was up to 31st December 2003, apart from steel rolling, M.S. Ingots were also inserted and the same was issued on 9-7-2003. The letter dated 28-1-2005 sent by Deputy Director, Industrial Health and Security, Raipur to Mr. Anil Agrawal of the petitioner company with reference to the letter dated 27-12-2004 and it was informed that new factory licence is issued only when factory is totally new, but from your letter, it appears that Agrawal Structure Mills (P) Ltd., Urla has been expanded and some furnace has been established. Therefore, for the expansion only amendment is to be incorporated in the licence. Annexure-P/4 is the permanent registration certificate issued under the Madhya Pradesh Commercial Taxation Act, 1994. Perusal of the same also shows that initially it was for manufacturing of re-rolling products, with effect from 7-10-2002 M.S. Ingot product was inserted and amended. Even certificate issued by the Commercial Taxation Officer at page 22 also shows that initially the commercial registration certificate was issued to M/s Agrawal Structure Mills (P) Ltd., on 2-9-98 and thereafter on 2-12-2002 M.S. Ingot was also inserted in the said

certificate. Annexure-P/5 is the registration certificate issued under Rule 5(1) of the Central Commercial Tax Rules, 1957. The said certificate was initially issued on 11-7-96 for M/s Agrawal Structure Mills (P) Ltd., and thereafter regarding M.S. Ingots insertion was made on 2-12-2002. Similar is the position under the Central Sales Tax Act. Similar is the position of proforma of registration certificate issued on 30th August 1996 by the Central Excise Department.

11. Perusal of the above documents shows that only insertions were made regarding new product M.S. Ingot in the original certificates of the petitioner company which was issued in the year 1996-98, whereas, requirement of clause-4 of the Industrial Policy is that there should be a separate factory licence, Central Sales Tax licence, Central Excise Tax licence and there must be a separate Sales Tax Registration Certificate under the State and Central Act. As far as maintenance of the separate account books is concerned, it has been mentioned in the petition, but nothing has been placed on record which indicates that separate account books are being maintained for M.S. Ingot unit and also that separate assessments are being made under the Central Excise and Sales Tax Act and the State Sales Tax Act. All these documents shows that no separate registration certificates and licences were issued in favour of the petitioner indicating establishment of a new unit. In other words, above documents on which petitioner has placed reliance do not satisfy the requirements of clause-4 of the Industrial Policy to be known as new unit. Therefore, I am of the considered opinion that in view of the above facts, the petitioner has not been able to make out a case for benefit and concession available under the new Industrial Policy, Annexure-P/2, issued by the State of Chhattisgarh with effect from 2001. In this connection, the Hon'ble Apex Court in the matter of **GRASIM INDUSTRIES LTD AND ANOTHER Versus STATE OF MADHYA PRADESH AND ANOTHER** reported in **(1999) 8 SUPREME COURT CASES 547**, after relying on its earlier decision in the matter of

UNION OF INDIA V. WOOD PAPERS LTD reported in **(1990) 4 SCC 256**, in para-5, held that "*it is settled position of law that exemption notification particularly in fiscal matters has to be strictly construed and the person claiming its benefit is obliged to satisfy the court that his claim was covered by the exemption notification. The notification has to be read in its entirety and not in parts.*" The above observation was made by the Hon'ble Apex Court while interpreting the notification dated 13-3-1981 issued under Section 3-B of the Madhya Pradesh Electricity Duty Act, 1949 for exempting all the producers who run industries from payment of duty during the period specified with effect from 10-12-1980. In the above case also, the appellants had set up their own generating units for the supply of electrical energy and claimed the benefit of above notification.

12. Therefore, the petitioner has not been able to establish before this Court that the petitioner company had set up a new Industrial Unit as envisaged under clause-4 of the Industrial Policy issued under the notification on 3/7th-6-2003 because before granting exemption of the electricity duty and the interest the intention of the Government was to encourage establishing and setting up of a new Industrial Unit, to give a boost to the industrial development in the State and also for generating employment for the public whereas, from the documents produced by the petitioner, it shows only that this was the expansion of the existing unit and it was not entirely a new independent unit set up in terms of clause-4 of the Industrial Policy.

13. In the result, the petitioner's petition fails and the same is dismissed but without any order as to costs.

Sd/-
L.C.Bhadoo
Judge

-8-2005

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